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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Michael Zeleny,

Plaintiff,

vs.

Edmund G. Brown, Jr., et al.,

Defendants.

Case No. 17-cv-07357-RS

**NEA'S REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF NEA'S MOTION TO
DISMISS PLAINTIFF'S CORRECTED
FIRST AMENDED COMPLAINT**

Date: June 13, 2019

Time: 1:30 p.m.

Courtroom: 3, 17th Floor

1 Pursuant to Federal Rule of Evidence 201, Defendant New Enterprise Associates, Inc. (“NEA”),
2 requests that the Court take judicial notice of pleadings and court records in support of its motion to
3 dismiss filed on May 9, 2019.

4 Federal Rule of Evidence 201 provides that, upon request, a court shall take judicial notice of facts
5 that are “capable of accurate and ready determination by resort to sources whose accuracy cannot
6 reasonably be questioned.” Fed. R. Evid. 201. Examples of matters whose accuracy cannot reasonably
7 be questioned are public records such as pleadings, orders and other papers on file in another action
8 pending in court, or the legislative history of laws, rules or ordinances. *See Mack v. South Bay Beer*
9 *Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), abrogated on other grounds by *Astoria Federal*
10 *Sav. And Loan Ass’n Solimino*, 501 U.S. 104 (1991); *Rupert v. Bond*, 68 F.Supp.3d 1142 (N.D. 2014) (in
11 connection with motion to dismiss, granting request for judicial notice of, *inter alia*, pleadings,
12 declarations, and orders issued in other courts).

13 In ruling on a motion to dismiss for failure to state a claim, the court may judicially notice public
14 records. *MGIC Idem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (holding that a court may take
15 judicial notice of official records and reports without converting a Rule 12(b)(6) motion into a Rule 56
16 motion for summary judgment); *Shaw v. Hahn*, 56 F.3d 1128, 1129 n.1 (9th Cir. 2005).

17 For the foregoing reasons, Defendant NEA requests that the Court take judicial notice of the
18 following four documents offered in support of its Motion to Dismiss Plaintiff’s Section 1983 and 1985
19 claims against NEA on the grounds, *inter alia*, that the statute of limitations has run on those claims. True
20 and correct copies of these four documents are attached to the declaration of Roger A. Lane filed
21 concurrently herewith:

22 1. **Exhibit A** – Form Interrogatories – General, served by Michael Zeleny in *New Enterprise*
23 *Associates, Inc. v. Zeleny*, Case No. CIV 499465 (California Superior Court, County of San Mateo), for
24 the proposition that on July 13, 2011, Michael Zeleny propounded Form Interrogatory 13.1: “Have YOU
25 OR ANYONE ACTING ON YOUR BEHALF conducted surveillance of any individual involved in the
26 INCIDENT or any party to this action?”

27 2. **Exhibit B** – New Enterprise Associates, Inc.’s Objections and Second Supplemental Responses
28

to Defendant's Form Interrogatories, served on September 14, 2011, in *New Enterprise Associates, Inc. v. Zeleny*, Case No. CIV 499465 (California Superior Court, County of San Mateo), for the proposition that NEA provided a First and Second Supplemental Response to Form Interrogatory No. 13.1 identifying individuals who conducted surveillance of Michael Zeleny, and that the Menlo Park Police have photographs and/or video recordings related to surveillance conducted when Mr. Zeleny was present at 2855 Sand Hill Road, Menlo Park, California and its surroundings.

3. **Exhibit C** – a Subpoena to Testify at a Deposition in a Civil Action dated December 13, 2018, that was issued by the Plaintiff, Michael Zeleny, for the proposition that Plaintiff in this matter sought testimony and documents from NEA regarding, *inter alia*, "Any surveillance or investigation of Zeleny by or on behalf of any of the NEA Parties, Including any surveillance referenced in the action captioned *NEA v. Zeleny*, San Mateo Superior Court Case No. CIV499465." (Topic No. 8; Request No. 11).

4. **Exhibit D** – Notice of Entry of Judgment and Permanent Injunction entered in *New Enterprise Associates, Inc. v. Zeleny*, Case No. Civ. 499465 (California Superior Court, County of San Mateo) for the proposition that a Permanent Injunction issued against Plaintiff on September 22, 2011.

FOLEY & LARDNER LLP

May 9, 2019

/s Roger A. Lane
 Roger A. Lane
 Courtney Worcester
 Attorney for New Enterprise Associates

PROOF OF SERVICE

I hereby certify that on May 9, 2019, I electronically filed the foregoing document using the Court's CM/ECF system. I am informed and believe that the CM/ECF system will send a notice of electronic filing to the interested parties.

/s/ Roger A. Lane
Roger A. Lane